

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 563 of 1997

in

SPECIAL CIVIL APPLICATION No. 10530 of 1996

For Approval and Signature:

Hon'ble MR. JUSTICE C.K. THAKKER

and

MR. JUSTICE S.D. PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DEPUTY POLICE COMMISSIONER

Versus

SIRAJMINYA H BELIM

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Appearance:

MR DA BAMBHANIA for Petitioners

MR NB TIWARI for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 08/07/97

ORAL JUDGEMENT {Per : Thakker, J.}

Admitted.

Mr. N.D Tiwari, learned advocate appears for the

respondeent and waives service of notice of admission. In the facts and circumstances of the case, appeal is taken up for final hearing today.

2. This appeal is directed against an interim order passed by the learned Single Judge in Special Civil Application No. 10530 of 1996 on April 30, 1996. On that day, the learned Single Judge passed the following order :-

" In response to the notice issued by this Court neither of the respondents has appeared. Besides, a complaint being Crime Register No. 28/96 is lodge against one Kashinath, a Police Sub-Inspector. The said complaint does not refer to the present petitioner, who has been serving as police Constable in Ghatlodiya Police Station.

By way of ad-interim order implementation and further operation of the impugned order of suspension dated 3rd December, 1996 Annexure-A to the petition is stayed. Direct service permitted."

3. We have heard Mr. Bambhania, learned AGP for the Appellant and Mr. Tiwari, learned counsel for the Respondent. Mr. Bambhania submitted that it is true that the date on which the matter was placed on Board, nobody appeared on behalf of the Respondent. He, however, stated that there was some communication gap on the part of the State authorities and in these circumstances, no one could appear. At the same time, however, according to Mr. Bambhania, the learned Single Judge ought to have appreciated the facts and circumstances of the case and ought not to have granted relief, which is of mandatory nature and that too against an order of suspension which is preventive in character and by directing the appellant-State to continue the respondent Police Constable by allowing him to perform functions and discharge duties.

4. It was submitted that what weighed with the learned Single Judge was that in First Information Report, lodged at ACB Police Station, Ahmedabad on October 4, 1996 neither the name of the respondent was mentioned nor the role played by him was described. Filing of FIR, however, is merely a beginning and not an end. In pursuance to lodging of FIR, investigation started and during the investigation, statements were recorded and it was found that not only the reespondent played a role, but it was an active role. In this

connection, our attention was invited to paragraph 4 of the Affidavit-in-Reply which was to be filed in Special Civil Application by one Vijayrajsinh Gautam, IPS, DCP {Zone-I}, Ahmedabad. Mr. Bambhania stated that the affidavit was prepared and was ready but due to some communication gap, it could not be produced and nobody could appear. Paragraph No. 4 of the said Affidavit-in-reply reads thus;

" 4. With reference to para 4 and contention thereof it is submitted that the petitioner alongwith PSI were incharge of the investigation in Ghatlodiya Police Station M. Case No. 41 of 1996 and for giving favour to the complainant an amount of Rs. 500/= has been demanded as per the facts reported to the administration. it is the case of the administration that at the time of trap it has been conveyed by the PSI that let petitioner may turn-up and thereafter account will be settled. It is submitted that pursuant to request made by the original complainant an amount of Rs. 500/= alleged to have been accepted by the PSI for and on behalf of petitioner and PSI. The further investigation revealed that petitioner and PSI both were the author of the demanding the gratification and accepting the gratification. It is submitted that the investigation by assessing all the facts came to the conclusion for entire episode of demanding illegal gratification and accepting the gratification the petitioner has played main roll and therefore the appropriate proceedings were initiated for arraign the petitioner as accused in the criminal proceedings in conformity with the facts revealed during the investigation and same is lodge before the Hon'ble Court. It is further submitted that petitioner was Writer Constable of the P.S.I and accordingly incharge of the investigation alongwith the P.S.I. It is submitted that accordingly sanction to prosecute has been accorded. Thus prima facie facts revealed during the investigation and thereafter lead to the conclusion that active service of the petitioner is detrimental to the proceedings and further process and therefore orders of suspension has been passed in the interest of administration as the petitioner cannot be trusted as a police force member on active duty further more and if the criminal proceedings is terminated wherein the petitioner is also arraigned for the charges punishable under the

provisions of the Corruption Act and in that view of the matter, it is humbly submitted that this Hon'ble Court may be pleased to reject the petition in limine with costs."

5. Mr. Bambhania submitted that in the light of what is stated in paragraph 4, prima facie case has been made out against the respondent. When preventive action is taken, the learned Single Judge ought not to have granted relief, at interim stage.

6. We see considerable force in the argument of Mr. Bambhania. It cannot be gainsaid that the allegations are of serious nature. They relate to an offence of corruption. If in the light of such allegations, a preventive action of suspension is taken, by no stretch of imagination, it can be said to be arbitrary, unreasonable or improper.

7. The learned counsel for the respondent stated that in view of interim order in favour of the respondent during the pendency of the petition, he may be permitted to work. In our opinion, such prayer cannot be granted in light of what is stated above. It is open to the learned advocate for the respondent to request the learned Single Judge to hear and decide the main matter expeditiously. As and when such a prayer is made, the learned Single Judge will consider the same and pass an appropriate order in accordance with law.

8. For the foregoing reasons, the order passed by the learned Single Judge deserves to be set-aside, and is accordingly set-aside.

9. Before parting with the judgment, we may state that all the above observations, made by us hereinabove, have been made only to dispose of this Letters Patent Appeal, and as and when the petition will be heard by the learned Single Judge, the same would be decided in accordance with law without being influenced in any manner by the observations made by us hereinabove. Appeal is allowed. In the facts and circumstances of the case, no order as to costs.

Prakash\*